

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	:	CASE NO. 5:18-cr-00647
Plaintiff,	:	OPINION & ORDER
v.	:	[Resolving Docs. 36; 38]
DEMOND C. SMART,	:	
Defendant.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

Defendant Demond Smart requests a reduced sentence under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A).¹ Defendant argues relief should be granted because of his health issues and the risks presented by the COVID-19 pandemic. The Government opposes Smart's request.²

In deciding this motion, the Court must determine whether "extraordinary and compelling reasons" exist to warrant a reduction in sentence.³ The Court must then consider the sentencing factors set forth in 18 U.S.C. § 3553 and determine whether the reduction is warranted in whole or in part under the circumstances of the case.⁴

For the following reasons, the Court **DENIES** Defendant Smart's motion for compassionate release.

I. Background

In January 2019, Defendant Smart pled guilty to being a felon in possession of a

¹ Docs. 36; 36-1; 38.

² Docs. 39; 42 (Sealed).

³ 18 U.S.C. § 3582(c)(1)(A); *United States v. Jones*, 980 F.3d 1098, 1108 (6th Cir. 2020) (holding federal judges have full discretion to define extraordinary and compelling).

⁴ 18 U.S.C. § 3582(a); *Jones*, 980 F.3d at 1108 (internal quotation omitted).

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firearm and ammunition.⁵ On April 25, 2019, this Court sentenced Smart to 76 months imprisonment and three years of supervised release.⁶ The Court also revoked Smart's supervised release on two previous cases and sentenced Smart to an additional 7 months in prison, totaling 83 months imprisonment.⁷ The Sixth Circuit affirmed Smart's sentence.⁸

II. Discussion

Smart moves for compassionate release. He says that relief should be granted because of his health issues and the risks presented by the COVID-19 pandemic.⁹ Smart also recounts his rehabilitative efforts while incarcerated and says he has a reliable release plan were his sentence to be reduced to a period of home confinement.¹⁰ The Government opposes.¹¹

A. Exhaustion

The Court may modify a defendant's term of imprisonment upon a motion from a defendant once 30 days have expired since the warden of the defendant's facility received such a motion from the defendant.¹² On August 26, 2020, Smart's request for compassionate release was denied by the U.S.P. Canaan warden.¹³ Smart satisfies the exhaustion requirement.

B. Eligibility

Under the compassionate release statute, the Court may "reduce the term of imprisonment [] and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of

⁵ Docs. 7; 12.

⁶ Docs. 17; 18.

⁷ Doc. 17 at 2.

⁸ Doc. 30.

⁹ Docs. 36; 36-1; 38.

¹⁰ *Id.*

¹¹ Docs. 39; 42 (Sealed).

¹² 18 U.S.C. § 3582(c)(1)(A); *United States v. Alam*, 960 F.3d 831, 833–34 (6th Cir. 2020).

¹³ Doc. 39 at 2.

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imprisonment].”¹⁴

To grant compassionate release, the Court must first find “extraordinary and compelling reasons” warranting a reduction in sentence.¹⁵ The Court must then consider the sentencing factors set forth in 18 U.S.C. § 3553 and determine whether the reduction is warranted in whole or in part under the circumstances of the case.¹⁶ The Sixth Circuit has held that the Sentencing Commission’s policy statement is not binding in considering compassionate release motions.¹⁷

a. Extraordinary and Compelling Reasons

Defendant Smart argues that his health issues and the risks posed by the COVID-19 pandemic constitute an extraordinary and compelling reason to reduce his sentence.¹⁸ Specifically, Smart has a history of diabetes, hypertension, and high blood pressure.¹⁹

Defendant Smart’s health conditions and the COVID-19 risk do not constitute an extraordinary and compelling reason warranting a sentence reduction.

Smart has received two doses of the Pfizer COVID-19 vaccine.²⁰ The Sixth Circuit has made clear that “a defendant’s incarceration during the COVID-19 pandemic—when the defendant has access to the COVID-19 vaccine—does not present an ‘extraordinary and compelling reason’ warranting a sentence reduction.”²¹

¹⁴ 18 U.S.C. § 3582(c)(1)(A).

¹⁵ *Id.*; *Jones*, 980 F.3d at 1108 (holding federal judges have full discretion to define extraordinary and compelling).

¹⁶ 18 U.S.C. § 3582(a); *Jones*, 980 F.3d at 1108 (internal quotation omitted).

¹⁷ See *United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021).

¹⁸ Docs. 36; 36-1; 38.

¹⁹ Docs. 38 at 7; 38-1; 38-2; 38-3; 38-4.

²⁰ Doc. 42-1 (Sealed) at 101.

²¹ *United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021); see also *United States v. Smith*, No. 17-CR-20753, 2021 WL 364636, at *2 (E.D. Mich. Feb. 3, 2021), aff’d, No. 21-1209, 2021 WL 3876943 (6th Cir. Aug. 24, 2021) (noting that absent a shift in the scientific consensus regarding the efficacy of vaccines, “vaccination against COVID-19 would preclude the argument that a defendant’s susceptibility to the disease is ‘extraordinary and compelling’ for purposes of § 3582(c)(1)(A).”); *United States v. White*, No. 15-CR-20040-01, 2021 WL 964050, at *2 (E.D. Mich. Mar. 15, 2021) (“Defendant is free to renew his motion should more information emerge suggesting that the Pfizer vaccine cannot protect him from new imminent strains of COVID-19. However, at this time, the Court does not find extraordinary and compelling circumstances based on that speculation.”).

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Further, Smart's health conditions alone, do not constitute extraordinary and compelling circumstances. His medical records indicate his conditions are chronic but stable and treated by the Bureau of Prisons.²² This is not sufficient to warrant a reduction.²³

b. 18 U.S.C. § 3553(a) Factors

Once a Court has identified an extraordinary and compelling reason warranting a sentence reduction, the Court must consider any applicable 18 U.S.C. § 3553 factors and determine whether the reduction is warranted under the circumstances of the case.²⁴

In this case, the Court has not identified any extraordinary and compelling reason warranting a sentence reduction. Even if it had, the § 3553 factors would weigh against granting the motion for compassionate release. Prior to this offense, Defendant Smart had multiple convictions including a felonious assault conviction with firearm and criminal gang specifications for a drive-by shooting, other firearms violations, a domestic violence conviction, and an escape conviction.²⁵ A sentence reduction is not warranted.

III. Conclusion

For the foregoing reasons, the Court **DENIES** Defendant Smart's motion for compassionate release.

IT IS SO ORDERED.

Dated: June 7, 2022

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

²² Doc. 40-1 (Sealed) at 1, 16, 110-11.

²³ *United States v. Lake*, No. CR 5:16-076-DCR, 2019 WL 4143293, at *3 (E.D. Ky. Aug. 30, 2019) (finding that chronic conditions that can be managed in prison are not a sufficient basis for compassionate release).

²⁴ 18 U.S.C. § 3582(a); 18 U.S.C. § 3553; *Jones*, 980 F.3d at 1108 (internal quotation omitted). Such sentencing factors include, *inter alia*, "the nature and circumstances of the offense and the history and characteristics of the defendant;" "the need for the sentence imposed" to "reflect the seriousness of the offense" and to "protect the public from further crimes of the defendant".

²⁵ Doc. 15 (Sealed) at 5-7.